

**§ 130A-309.212. Identification and assessment of discharges; correction of unpermitted discharges.**

(a) Identification of Discharges from Coal Combustion Residuals Surface Impoundments. –

- (1) The owner of a coal combustion residuals surface impoundment shall identify all discharges from the impoundment as provided in this subsection. The requirements for identifying all discharges from an impoundment set out in this subsection are in addition to any other requirements for identifying discharges applicable to the owners of coal combustion residuals surface impoundments.
- (2) No later than December 31, 2014, the owner of a coal combustion residuals surface impoundment shall submit a topographic map that identifies the location of all (i) outfalls from engineered channels designed or improved for the purpose of collecting water from the toe of the impoundment and (ii) seeps and weeps discharging from the impoundment that are not captured by engineered channels designed or improved for the purpose of collecting water from the toe of the impoundment to the Department. The topographic map shall comply with all of the following:
  - a. Be at a scale as required by the Department.
  - b. Specify the latitude and longitude of each toe drain outfall, seep, and weep.
  - c. Specify whether the discharge from each toe drain outfall, seep, and weep is continuous or intermittent.
  - d. Provide an average flow measurement of the discharge from each toe drain outfall, seep, and weep including a description of the method used to measure average flow.
  - e. Specify whether the discharge from each toe drain outfall, seep, and weep identified reaches the surface waters of the State. If the discharge from a toe drain outfall, seep, or weep reaches the surface waters of the State, the map shall specify the latitude and longitude of where the discharge reaches the surface waters of the State.
  - f. Include any other information related to the topographic map required by the Department.

(b) Assessment of Discharges from Coal Combustion Residuals Surface Impoundments to the Surface Waters of the State. – The owner of a coal combustion residuals surface impoundment shall conduct an assessment of discharges from the coal combustion residuals surface impoundment to the surface waters of the State as provided in this subsection. The requirements for assessment of discharges from the coal combustion residuals surface impoundment to the surface waters of the State set out in this subsection are in addition to any other requirements for the assessment of discharges from coal combustion residuals surface impoundments to surface waters of the State applicable to the owners of coal combustion residuals surface impoundments:

- (1) No later than December 31, 2014, the owner of a coal combustion residuals surface impoundment shall submit a proposed Discharge Assessment Plan to the Department. The Discharge Assessment Plan shall include information sufficient to allow the Department to determine whether any discharge, including a discharge from a toe drain outfall, seep, or weep, has reached the surface waters of the State and has caused a violation of surface water quality standards. The Discharge Assessment Plan shall include, at a minimum, all of the following:

- a. Upstream and downstream sampling locations within all channels that could potentially carry a discharge.
  - b. A description of the surface water quality analyses that will be performed.
  - c. A sampling schedule, including the frequency and duration of sampling activities.
  - d. Reporting requirements.
  - e. Any other information related to the assessment of discharges required by the Department.
- (2) The Department shall approve the Discharge Assessment Plan if it determines that the Plan complies with the requirements of this subsection and will be sufficient to protect public health, safety, and welfare; the environment; and natural resources.
  - (3) No later than 30 days from the approval of the Discharge Assessment Plan, the owner shall begin implementation of the Plan in accordance with the Plan's schedule.

(c) Corrective Action to Prevent Unpermitted Discharges from Coal Combustion Residuals Surface Impoundments to the Surface Waters of the State. – The owner of a coal combustion residuals surface impoundment shall implement corrective action to prevent unpermitted discharges from the coal combustion residuals surface impoundment to the surface waters of the State as provided in this subsection. The requirements for corrective action to prevent unpermitted discharges from coal combustion residuals surface impoundments to the surface waters of the State set out in this subsection are in addition to any other requirements for corrective action to prevent unpermitted discharges from coal combustion residuals surface impoundments to the surface waters of the State applicable to the owners of coal combustion residuals surface impoundments:

- (1) If the Department determines, based on information provided pursuant to subsection (a) or (b) of this section, that an unpermitted discharge from a coal combustion residuals surface impoundment, including an unpermitted discharge from a toe drain outfall, seep, or weep, has reached the surface waters of the State, the Department shall notify the owner of the impoundment of its determination.
- (2) No later than 30 days from a notification pursuant to subdivision (1) of this subsection, the owner of the coal combustion residuals surface impoundment shall submit a proposed Unpermitted Discharge Corrective Action Plan to the Department for its review and approval. The proposed Unpermitted Discharge Corrective Action Plan shall include, at a minimum, all of the following:
  - a. One of the following methods of proposed corrective action:
    1. Elimination of the unpermitted discharge.
    2. Application for a National Pollutant Discharge Elimination System (NPDES) permit amendment pursuant to G.S. 143-215.1 and Subchapter H of Chapter 2 of Title 15A of the North Carolina Administrative Code to bring the unpermitted discharge under permit regulations.
  - b. A detailed explanation of the reasons for selecting the method of corrective action.
  - c. Specific plans, including engineering details, to prevent the unpermitted discharge.
  - d. A schedule for implementation of the Plan.

- e. A monitoring plan for evaluating the effectiveness of the proposed corrective action.
  - f. Any other information related to the correction of unpermitted discharges required by the Department.
- (3) The Department shall approve the Unpermitted Discharge Corrective Action Plan if it determines that the Plan complies with the requirements of this subsection and will be sufficient to protect public health, safety, and welfare; the environment; and natural resources.
  - (4) No later than 30 days from the approval of the Unpermitted Discharge Corrective Action Plan, the owner shall begin implementation of the Plan in accordance with the Plan's schedule.
- (d) Identification of New Discharges. – No later than October 1, 2014, the owner of a coal combustion residuals surface impoundment shall submit a proposed Plan for the Identification of New Discharges to the Department for its review and approval as provided in this subsection:
- (1) The proposed Plan for the Identification of New Discharges shall include, at a minimum, all of the following:
    - a. A procedure for routine inspection of the coal combustion residuals surface impoundment to identify indicators of potential new discharges, including toe drain outfalls, seeps, and weeps.
    - b. A procedure for determining whether a new discharge is actually present.
    - c. A procedure for notifying the Department when a new discharge is confirmed.
    - d. Any other information related to the identification of new discharges required by the Department.
  - (2) The Department shall approve the Plan for the Identification of New Discharges if it determines that the Plan complies with the requirements of this subsection and will be sufficient to protect public health, safety, and welfare; the environment; and natural resources.
  - (3) No later than 30 days from the approval of the Plan for the Identification of New Discharges, the owner shall begin implementation of the Plan in accordance with the Plan.
- (e) Reporting. – In addition to any other reporting required by the Department, the owner of a coal combustion residuals surface impoundment shall submit an annual Surface Water Protection and Restoration Report to the Department no later than January 31 of each year. The Report shall include a summary of all surface water sampling, protection, and restoration activities related to the impoundment for the preceding year, including the status of the identification, assessment, and correction of unpermitted discharges from coal combustion residuals surface impoundments to the surface waters of the State. (2014-122, s. 3(a); 2016-95, s. 1.)